

Louis C. Paul & Associates, PLLC  
Louis C. Paul (LP0467)  
James D. Fornari (JF3433)  
299 Park Avenue, 6<sup>th</sup> Floor  
New York, NY 10171  
Telephone and Facsimile: 212-223-8200  
E-mail: docketing@paulipgroup.com

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

EVRIHOLDER PRODUCTS, LLC

Plaintiff,

vs.

SIMPLY LBS LTD. COMPANY

IMPULSEEV LTD

HUANYU HK, LTD.

DOES 1-10

Defendants

Case No.:

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff EVRIHOLDER PRODUCTS, LLC complains and alleges against SIMPLY LBS LTD. COMPANY; IMPULSEEV LTD.; HUANYU HK, LTD. and DOES 1-10, as follows:

**The Parties**

1. Evriholder Products, LLC (“Plaintiff” or “Evriholder”) is an Indiana limited liability company, having its principal place of business at 1500 South Lewis Street, Anaheim California 92805. As described further hereinbelow, Evriholder is the exclusive licensee of U.S. Design Patent No. D524,612 (“the ’612 Patent”), and has the right to bring an action for enforcement and damages due to the infringement of the ’612 Patent.

2. Upon information and belief, Defendant Simply Lbs Ltd Company (“Chef Remi”) is a private limited company registered in Hong Kong doing business as “Chef Remi,” and has an address at 172 Trade Street, Lexington, Kentucky 40511.

3. Upon information and belief, Impulseev Ltd. (“Impulseev”) is a private limited company registered in the United Kingdom, with a principal place of business at 8 Hannah Gardens, Waterlooville, Hampshire, United Kingdom P0077TF.

1 4. Upon information and belief, Defendant Jo Barnes is an individual residing at 17 Manton Close, Chichester  
2 West, Sussex PO20 8RN, United Kingdom.

3 5. Upon information and belief, Rhett Lewis is the Chief Executive Officer of Chef Remi.

4 6. Upon information and belief, Huanyu (HK) Industrial Ltd. (“Huanyu”) is a private limited company  
5 registered in Hong Kong, with a principal place of business at No.1 Field of Pingjiao Industrial Area, Yangjiang  
6 529500, Guangdong, China.

7 **Jurisdiction and Venue**

8 7. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C.  
9 §§ 1 et seq.

10 8. This Court has original and exclusive subject matter jurisdiction over the patent infringement claims for  
11 relief under 28 U.S.C. §§ 1331 and 1338(a).

12 9. This Court has personal jurisdiction over Defendants because Defendants have sufficient contacts with this  
13 judicial district to subject themselves to the jurisdiction of this Court, including having transacted and continuing to  
14 transacting business in this judicial district through the marketing and sale of Chef Remi Jar Openers that infringe  
15 the ’612 Patent.

16 10. Venue is proper in this district under 28 U.S.C. § 1391(b-c) and 1400(b) because a substantial part of the  
17 events or omissions giving rise to the claims occurred in this District, where Defendants have done business and  
18 committed infringing acts and continues to do business and to commit infringing acts.

19 11. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. §  
20 1332.

21 **FACTUAL BACKGROUND**

22 **Evriholder’s EASI-TWIST Jar Opener**

23 12. U.S. Design Patent No. D524,612 (“the ’612 Patent”) for a Jar Opener issued to, and is owned by,  
24 Mulberry Imports, Ltd. (“Mulberry”). A true and correct copy of the ’612 Patent is attached as Exhibit A.

25 13. Mulberry has granted an exclusive license to Evriholder to make, have made, import, offer to sell and sell  
26 the Jar Opener claimed in the ’612 Patent. This exclusive license grants Evriholder the right to enforce the patent,  
27 including the right to file suit to enjoin infringement thereof, and recover damages for infringement of the ’612  
28 Patent.

14. Evriholder is the owner of U.S. Trademark Registration No. 3,067,678 for the mark EASI-TWIST in connection with kitchen gadgets, namely bottle openers and jar openers as well as manually operated container openers for household and domestic use. A true and correct copy of this Registration is attached as Exhibit B.

15. Since at least as early as December of 2004, Evriholder has continuously used the distinctive trademark EASI-TWIST® to market and sell jar openers (and other housewares) throughout the United States.

16. Evriholder has devoted substantial time, effort, and resources to the development and extensive promotion of the EASI-TWIST® mark and the products offered thereunder. As a result of Evriholder's efforts, the public has come to recognize and rely upon the EASI-TWIST® mark as an indication of the high quality associated with Evriholder's kitchenware products.

17. Evriholder's EASI-TWIST® registration is in full force and effect on the Principal Trademark Register of the U.S. Patent and Trademark Office, giving rise to statutory presumptions with respect to validity, ownership, and exclusive rights to use the EASI-TWIST® mark throughout the United States. Section 8 (Affidavit of Use) and Section 15 (Affidavit of Incontestability) affidavits have been filed and accepted by the U.S. Patent and Trademark Office, making the EASI-TWIST® mark incontestable.

**Unauthorized Sale and Marketing of Chef Remi Jar Opener**

18. Chef Remi imports and sells kitchenwares in the United States, including online through Amazon.com. Among the kitchenwares sold by Chef Remi is the Chef Remi Jar Opener. A true and correct photograph of Chef Remi Jar Opener as sold by, or on behalf of, Chef Remi is attached as Exhibit C.

19. Chef Remi Jar Opener as sold by, or on behalf of, Chef Remi, is identical (or substantially indistinguishable) in design (i.e., shape) to the Evriholder EASI-TWIST jar openers, which are sold by Evriholder as the exclusive licensee of the '612 Patent.

20. Customer inquiries/returns for Chef Remi products sold in the United States are directed to an Amazon.com distribution center having an address of 13036 San Fernando Rd, Sylmar, California 91342. Customer inquiries to purchase Chef Remi products, and specifically the Chef Remi Jar Opener, are directed to and fulfilled by Chef Remi or Simply LBS, Ltd. all of which are located at 172 Trade Street, Lexington, Kentucky 40511.

21. Chef Remi and Simply LBS, Ltd. have shipped Chef Remi Jar Openers into New York State and specifically into the Southern District of New York.

22. U.S. Trademark Registration 5,006,600 for the mark CHEF REMI is registered to Impulseev.

23. On March 9, 2017, Plaintiff sent letters to Chef Remi at the Sylmar, California address and to Impulseev at the Hampshire, United Kingdom recited in Paragraph 4.

24. On March 15, 2017, Rhett Lewis, as the Chief Executive Officer of Chef Remi, sent an e-mail, in which he represented, on behalf of Chef Remi, that 27,000 Chef Remi Jar Openers had been sold and that Chef Remi had manufactured, and had in stock an additional 11,200 Chef Remi Jar Openers.

25. Mr. Lewis' email dated March 15, 2017 included a copy of an invoice from Defendant Huanyu to Chef Remi, for the manufacture of a further supply of Chef Remi Jar Openers in the amount of 20,160 units. The invoice included a photograph of a Jar Opener having the same design as claimed in the '612 Patent.

26. At no time was Defendant Chef Remi authorized to import, offer to sell or sell a jar opener as claimed in the '612 Patent.

27. At no time was Defendant Huanyu authorized to manufacture, offer to sell, sell, or import into the United States, a jar opener as claimed in the '612 Patent.

28. In his March 15, 2017 e-mail, Mr. Lewis represented that Chef Remi had spent thousands of dollars promoting Chef Remi Jar Openers on Amazon Marketing Services and Google's AdWords program.

29. Upon information and belief, Chef Remi's marketing of Chef Remi Jar Openers on Amazon Marketing Services included the keywords "Easy" and "Twist". Searching for these two words on Amazon.com generated search results in which Chef Remi Jar Opener appeared in the Sponsored Advertising Section.

30. At no time was Defendant Chef Remi authorized to offer to sell or sell a jar opener using the terms "Easy" and "Twist".

31. Chef Remi's unauthorized use of confusingly similar variations of EASI-TWIST as keywords and in the resulting Sponsored Advertisements on Amazon.com, was and is likely to confuse, mislead, and deceive consumers as to the source of jar openers offered for sale by Evriholder and jar openers offered for sale as Chef Remi Jar Openers, that are identical in design to the Evriholder EASI-TWIST jar openers.

32. The packaging of Evriholder's EASI-TWIST jar openers clearly displays ®, an unmistakable indicium of Evriholder's claim to exclusively use the two words "Easy" and "Twist" in connection with the marketing and sale of jar openers (and other housewares).

33. Chef Remi knew or should have known that targeted use of key words “Easy” and “Twist” by in its advertising of Chef Remi Jar Openers were likely to mislead consumers seeking to purchase Evriholder EASI-TWIST jar openers.

34. Chef Remi knew or should have known that jar openers marketed and sold as Chef Remi Jar Openers were and are identical (or substantially indistinguishable) in shape to the patented EASI-TWIST jar openers sold by Evriholder.

**FIRST CAUSE OF ACTION**  
**Patent Infringement Under 35 U.S.C. §§ 271(a) and (b)**

35. Evriholder realleges and incorporates by reference the allegations set forth in Paragraphs 1-34.

36. On July 11, 2006, U.S. Design Patent No. D524,612 (“the ’612 Patent”) was duly and legally issued. The ’612 Patent is entitled to a presumption of validity.

37. Chef Remi has committed, actively induced and contributed to the infringement of the ’612 patent. Chef Remi continues to commit, actively induce and contribute to the infringement of the ’612 patent. Specifically, Chef Remi’s importing Chef Remi Jar Opener into the United States and into the Southern District of New York and offering for sale and selling jar openers directly infringes the ’612 Patent. Further, by offering for sale, selling, importing, marketing, supporting and advertising said jar opener, Chef Remi is actively inducing the infringement of the ’612 Patent and contributing to the infringement of the ’612 Patent.

38. On information and belief, Chef Remi has been on notice of the ’612 Patent and its infringement, and has not ceased its infringing activities. Chef Remi’s infringement of the ’612 patent has been and continues to be willful and deliberate, making this an exceptional case within the meaning of 35 U.S.C. §285.

39. Evriholder has been irreparably harmed by Chef Remi’s acts of infringement of the ’612 Patent, and will continue to be harmed unless and until Chef Remi’s acts of infringement are enjoined and restrained by order of this Court.

40. As a result of Chef Remi’s acts of infringement, Evriholder has suffered, and will continue to suffer, damages in an amount to be proven at trial.

41. Pursuant to 35 U.S.C. § 289, Evriholder is entitled to Chef Remi’s total profit for selling jar openers with the design covered in the ’612 Patent. Furthermore, Evriholder is informed and believes, and on that basis alleges,

1 that Chef Remi's conduct was undertaken willfully, making this an exceptional case entitling Evriholder to recover  
2 additional damages and reasonable attorneys' fees pursuant to 35 U.S.C. § 284.

3 **SECOND CAUSE OF ACTION**

4 **Federal Unfair Competition and False Advertising Under 15 U.S.C. § 1125(a)**

42. Evriholder realleges and incorporates by reference the allegations set forth in Paragraphs 1-34.

5 43. Chef Remi's actions described above and specifically, without limitation, use of the words that are  
6 confusingly similar variations of Evriholder's registered trademark "Easy" and Twist" in commerce to advertise,  
7 market, and sell Chef Remi Jar Openers throughout the United States, including New York, constitute unfair  
8 competition and false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a).

9 44. Consumers are likely to be misled and deceived that jar openers advertised by Chef Remi using the  
10 key words "Easy" and "Twist" are Evriholder's EASI-TWIST jar openers.

11 45. Chef Remi knew or should have known that its online advertising using the targeted key words "Easy" and  
12 "Twist" were likely to mislead consumers and constitutes a false designation of origin.

13 46. As an actual and proximate result of Chef Remi's willful and intentional actions, Evriholder has suffered  
14 damages in an amount to be determined at trial, and unless Chef Remi is enjoined, Evriholder will continue to suffer  
15 irreparable harm and damage to its business, reputation, and goodwill.

16 47. Pursuant to 15 U.S.C. § 1117, Evriholder is entitled to damages for Chef Remi's Lanham Act violations, an  
17 accounting for profits made by Chef Remi on sales of Chef Remi Jar Openers. Furthermore, Evriholder is informed  
18 and believes, and on that basis alleges, that Chef Remi's conduct was undertaken willfully and with the intention of  
19 causing confusion, mistake or deception, making this an exceptional case entitling Plaintiff to recover additional  
20 damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Evriholder prays that this Court enter judgment against Defendants as follows:

- 23 A. An injunction prohibiting Chef Remi from selling and offering to sell jar openers claimed in the '612 Patent  
24 B. An injunction prohibiting Chef Remi from using the words "Easy" and "Twist" in the marketing and sale of  
25 openers for jars and other containers.  
26 C. An accounting for, and an award of, damages in an amount to be determined, but no less than all of Chef  
27 Remi's profit from the sale of the infringing jar openers;  
28

- 1 D. An accounting for, and an award of damages in an amount to be determined, for Chef Remi's unfair  
2 competition and false advertising in violation of the Lanham Act;
- 3 E. Pre- and post-judgment interest and costs;
- 4 F. That this Court find this to be an exceptional case and award Evriholder its reasonable attorneys' fees and  
5 treble damages; and,
- 6 G. Such other and further relief as this Court deems proper under all of the circumstances.

7 Dated: June 8, 2017

8  
9  
10 /s/ James D. Fornari  
JAMES D. FORNARI (JF3433)

11 /s/Louis C. Paul  
12 LOUIS C. PAUL (LP0467)

13 Louis C. Paul & Associates, PLLC  
14 299 Park Avenue, 6<sup>th</sup> Floor  
New York, NY 10171  
Telephone and Facsimile: 212-223-8200  
15 E-mail: [jamesfornari@sbcglobal.net](mailto:jamesfornari@sbcglobal.net)  
E-mail: [lpaul@paulipgroup.com](mailto:lpaul@paulipgroup.com)  
16 E-mail: [docketing@pauligroup.com](mailto:docketing@pauligroup.com)

17 ATTORNEYS FOR PLAINTIFF,  
18  
19 EVRIHOLDER PRODUCTS, LLC  
20  
21  
22  
23  
24  
25  
26  
27  
28